STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 4, 2007
v	No. 273586 Osceola Circuit Court
EDWARD DONALD ADDINGTON, Defendant-Appellant.	LC No. 06-003941-FH

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted at a jury trial of aggravated indecent exposure, MCL 750.335a(2)(b). He appeals as of right and we affirm. This case is being decided without oral argument under MCR 7.214(E).

The facts adduced at trial establish that defendant entered a launderette where the complainant was washing her laundry. Defendant went into the restroom. When the complainant was alone in the launderette, defendant came out of the restroom and approached her with the zipper on his pants undone. Defendant's genitalia were visible through the open zipper. The complainant testified that while the defendant attempted to engage her in conversation, he would periodically move his pants in such a way as to cause the open zipper to reveal more of his genitalia. He also periodically touched himself through his open zipper.

MCL 750.335a states as follows:

> (1) A person shall not knowingly make any open or indecent exposure of his or her person or of the person of another.
>
> (2) A person who violates subsection (1) is guilty of a crime, as follows:
>
> (a) Except as provided in subdivision (b) or (c), the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00, or both.
>
> (b) If the person was fondling his or her genitals, pubic area, buttocks, or, if the person is female, breast, while violating subsection (1),

> the person is guilty of a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than $2,000.00, or both.
>
> * * *

Defendant argues that the prosecutor failed to present sufficient evidence of his guilt. We disagree. "The evidence is sufficient if, viewed in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements were proven beyond a reasonable doubt." *People v Clark*, 172 Mich App 1, 6; 432 NW2d 173 (1988).

To convict defendant of aggravated indecent exposure, the prosecution was required to prove that defendant "knowingly" made an "open" or "indecent" exposure of his person, and that he was "fondling" his genitals or pubic area. MCL 750.335a. Defendant first challenges the jury's conclusion that he acted knowingly. However, evidence was presented that could lead a rational trier of fact to conclude defendant was aware that his zipper was down. The complainant testified that defendant touched his genitals more than once through the open zipper. Certainly, defendant's knowledge that his zipper was undone can be inferred from this testimony. *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004) (noting that only minimal circumstantial evidence need be presented to prove an actor's state of mind).

There is also evidence to support the conclusion that knowing his zipper was down, defendant made an open or indecent exposure of his genitalia. "Open" exposure under the statute requires that the prosecutor prove that the victim would have reasonably been expected to observe the exposure and that the victim might reasonably have been expected to have been offended by what was seen. *People v Neal*, 266 Mich App 654, 662-663; 702 NW2d 696 (2005). In this case, defendant exposed himself in a public launderette, displaying his genitals through an open zipper while speaking with the complainant. The complaint testified that defendant insisted that she look at a picture, which he held down near his waist, and that he moved his hands in a manner that increased the exposure of his genitals. This evidence is sufficient to establish that defendant's exposure was open, because the complainant could reasonably have been expected to observe the exposure and defendant's actions created a substantial risk that the complainant might be offended. *Id.*[1]

Defendant also challenges the jury's conclusion that he fondled himself. In relevant part, the term "fondling" has been defined as follows: "to molest sexually by touching, stroking, etc." *Random House Webster's College Dictionary* (1997). In context, the fondling referenced in MCL 750.335a(2)(b) involves the touching of the actor's own genitalia. Thus, the commonly understood meaning of molestation is inapplicable, i.e., there is no assault of another. Rather, this statute involves "touching" or "stroking" done for self-gratification of the actor's own sexual impulses or needs. Here, the circumstances suggest that defendant was touching himself through

[1] Although we need not reach the question because of our conclusion that the exposure was open, we also find sufficient evidence was presented to categorize defendant's exposure as indecent. See *People v Vronko*, 228 Mich App 649, 654; 579 NW2d 138 (1998).

his open zipper for sexual gratification. Accordingly, the evidence was sufficient for the jury to conclude defendant was "fondling" his genitals for purposes of the crime charged.

We affirm.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Karen M. Fort Hood